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S.B. 423 -- Foreclosure Prevention and Responsible Lending

Banks Committee Public Hearing -- February 28, 2008
Testimony of Raphael L. Podolsky

Recommended Committee action: **JOINT FAVORABLE**

This bill, which overlaps Sections 9 through 23 of H.B. 5577 and parts of S.B. 21, contains strong and effective requirements to minimize the likelihood of a repetition of the present mortgage and foreclosure crisis. We urge passage of S.B. 423 as a separate bill or, in the alternative, the merging of its provisions into Sections 9 through 23 of H.B. 5577.

Among its most important provisions, S.B. 423 includes the following:

- Lender and broker duties: S.B. 423 prohibits the "churning" loans (refinancing loans without providing any tangible benefit), requires reasonable efforts to avoid making loans not advantageous to the borrower, prohibits making loans in the absence of a reasonable belief that the borrower will be able to repay, and requires termination of a foreclosure action and reinstatement of the mortgage if all defaults are cured during the course of a foreclosure.

- Subprime and non-traditional mortgages: For subprime and non-traditional mortgages, S.B. 423 requires tax and insurance escrows, requires referral for pre-loan counseling, mandates counseling if the loan will refinance a subsidized ("special") mortgage, prohibits prepayment fees, prohibits any payment being more than double the other payments, prohibits negative amortization, prohibits restriction of dispute-resolution forums with less-than-full remedies, prohibits raising the interest rate after default, and requires verification of income at the fully-indexed rate for the loan.

- Remedies: S.B. 423 provides effective remedies for homeowners who are the victims of violations of the act, including statutory damages, the right to raise non-compliance with the act as a defense in a foreclosure action, and a significantly higher bond requirement for licensed lenders and brokers.

The provisions of this bill set strong standards for the lending industry and significantly reduce the risk that the overextension of credit that has caused such havoc in the housing market will recur. They give effective enforcement powers to the Banking Commissioner, to the Attorney General, and to consumers themselves. It is important that they be a part of any legislation coming out of the Banks Committee.